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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Docket No. OSHA-2012-0029

Hawaii State Plan for Occupational Safety and Health; Operational Status

Agreement Revisions

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice.

SUMMARY: This document announces revisions to the Operational Status Agreement between the Occupational Safety and Health Administration (OSHA) and the Hawaii State Plan, which specifies the respective areas of Federal and State authority, and under which Hawaii has reassumed additional coverage.

DATE: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

The Hawaii Occupational Safety and Health Division (HIOSH) administers an OSHA-approved State Plan to develop and enforce occupational safety and health standards for public-sector and private-sector employers pursuant to the provisions of section 18 of the Occupational Safety and Health Act (the Act), 29 U.S.C. 667. Pursuant to section 18(e) of the Act, 29 U.S.C. 667(e), OSHA granted Hawaii final approval effective April 30, 1984 (49 FR 19182).

From 2009-2012, the Hawaii State Plan faced major budgetary and staffing restraints that significantly affected its program. Therefore, the Hawaii Director of Labor and Industrial Relations requested a temporary modification of the State Plan's approval status from final approval to initial approval to permit supplemental federal enforcement activity and to allow Hawaii sufficient time and assistance to strengthen its State Plan. On September 21, 2012, OSHA published a Final Rule in the Federal Register (77 FR 58488) that modified the Hawaii State Plan's "final approval" determination under section 18(e) of the Act, transitioned the Plan to "initial approval" status under section 18(b) of the Act, and reinstated concurrent federal enforcement authority over occupational safety and health issues in the private sector. That Federal Register notice also provided notice of the Operational Status Agreement (OSA) between OSHA and HIOSH, which specified the respective areas of federal and state authority.

During its developmental period under initial approval, Hawaii's Department of Labor and Industrial Relations has taken several steps in rebuilding the capacity of HIOSH. Hawaii is committed to redeveloping its State Plan, has increased its staff recruitment to reach its staffing benchmark, and has exceeded the OSA's goal for the number of inspections in Fiscal Year 2015. HIOSH and OSHA have worked together to

strengthen the State Plan. Since 2012, OSHA and HIOSH have agreed to several addenda to the OSA to return greater responsibility to HIOSH. Accordingly, this notice provides information about the revisions to the OSA made in Fiscal Years 2015 and 2016.

Notice of Revisions to the Operational Status Agreement

Federal OSHA and HIOSH will exercise their respective enforcement authority according to the terms of the 2012 OSA between OSHA and HIOSH, which specifies the respective areas of federal and state authority, with revisions agreed to in September 2015. Under the 2012 OSA, Federal OSHA obtained and still retains coverage over all Federal employees and sites (including the United States Postal Service (USPS), USPS contract employees, and contractor-operated facilities engaged in USPS mail operations), private-sector maritime activities, and private-sector employees within the secured borders of all military installations where access is controlled. Under the 2012 OSA, Federal OSHA assumed coverage over agriculture and most of general industry, including facilities that include processes covered by the process safety management standard (29 CFR 1910.119), as well as provisions of the general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in that employment. Hawaii retained coverage over the construction industry, transportation and warehousing, and state and local government employment. In the Fiscal Year 2014 addendum to the OSA, Hawaii regained authority over manufacturing (NAICS 31 through 33) (except refineries (NAICS 324) and any other private-sector facilities that include processes covered by the process safety management standard (29 CFR 1910.119)). The FY 2014 addendum also provided a mechanism for the most-available

agency to respond to life-threatening situations on neighbor islands (79 FR 8855, February 14, 2014).

The Fiscal Year 2015 addendum to the OSA returned coverage over agriculture and general industry (except refineries (NAICS 324) and any other private-sector facilities that include processes covered by the process safety management standard (29 CFR 1910.119)) to HIOSH. Federal OSHA continues to cover refineries (NAICS 324) and any other private-sector facilities that include processes covered by the process safety management standard (29 CFR 1910.119) and enforces provisions of the Act and of the general industry and construction standards appropriate to hazards found in facilities with processes that are covered by the process safety management standard.

All terms of the 2012 OSA, as amended, remain in effect. The FY 2016 addendum updates the OSA's plan of action and milestones for HIOSH to work towards regaining section 18(e) final approval status. OSHA will continue to work with, and provide assistance to, HIOSH.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C., authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 1-2012 (76 FR 3912), and 29 CFR part 1902.

Signed in Washington, DC, on May 25, 2016.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

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